

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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DOC #:
DATE FILED: 7/23/10

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RONALD BROOKS,

Petitioner,

-against-

SUPT. JAMES CONWAY,

Respondent.
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10 Civ. 3872 (RJH)(AJP)

ORDER

On June 14, 2010, Magistrate Judge Andrew J. Peck issued a Report and Recommendation ("Report") in this habeas corpus action. The Report recommends that the Court dismiss plaintiff's petition without prejudice to allow him to exhaust his ineffective assistance claims in state court, since he still will have time to re-file his petition before expiration of the AEDPA limitations period. To date, the Court has neither received any objections to the Report nor any other communication, such as a letter requesting an extension of time in which to file objections, from Plaintiff.

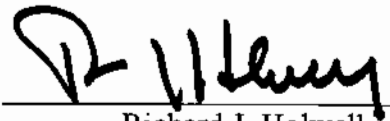
The district court adopts a Magistrate Judge's report and recommendation when no clear error appears on the face of the record. See Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). However, the court is required to make a de novo determination of those portions of a report to which objection is made, 28 U.S.C. § 636(b)(1)(C), by reviewing "the Report, the record, applicable legal authorities, along with Plaintiff's and Defendant's objections and replies." Badhan v. Lab. Corp. of Am., 234 F. Supp. 2d 313, 316 (S.D.N.Y. 2002). The court may then accept, reject, or modify in whole or in part recommendations of the Magistrate Judge. See Nelson, 618 F. Supp. at 1189. If a party

fails to object to a report within 14 days of being served with the report, that party waives their right to object and appellate review of the district court's decision adopting the report, absent unusual circumstances, is precluded. See United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997).

The Court finds that no clear error appears on the face of the record and hereby adopts the Report. Brooks' petition is dismissed without prejudice to allow him to exhaust his ineffective assistance claims in state court. The Clerk shall close this case.

SO ORDERED.

Dated: New York, New York
July 20, 2010



Richard J. Holwell
United States District Judge